

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Ex Parte Petition for
Interim Suspension Order Against:

STEVEN FERNANDO PENA
904 Silver Spur Road, #485
Rolling Hills Estates, CA 90274

Respiratory Care Practitioner License
No. 15392

Respondent.

Case No. 1H-2005 605

OAH No. L2006040786

ORDER ON PETITION

FOR ORDER OF INTERIM SUSPENSION

On May 1, 2006, at Los Angeles, California, the Petition of Stephanie Nunez, Executive Officer of the Respiratory Care Board, Department of Consumer Affairs, State of California (Board) for issuance, on an ex parte basis, of an Interim Order of Suspension, came on for hearing before II. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings.

Adrian K. Panton, Deputy Attorney General, represented Petitioner.

Respondent, Steven Fernando Pena (Respondent) was present and was represented by Edgardo Gonzalez, Attorney at Law.

///

///

///

The Administrative Law Judge read and considered the ex parte application and the declarations and points and authorities filed in support and opposition, and heard testimony and argument. At the close of the hearing, he orally issued an order suspending Respondent's certificate¹ and the matter was set for a noticed hearing on May 22, 2006, pursuant to the requirements of Government Code section 11529.

On May 22, 2006, the noticed hearing was held. Robert McKim Bell, Supervising Deputy Attorney General, represented Petitioner. No appearance was made by or on behalf of Respondent.²

Petitioner offered two additional exhibits at the May 22, 2006 hearing.

The written evidence and legal argument submitted by the parties having been read, heard and considered, and after oral argument, the Administrative Law Judge makes the following Order:

FACTUAL FINDINGS

1. Petitioner, Stephanie Nunez, made the Petition in her official capacity as Executive Officer of the Respiratory Care Board, Department of Consumer Affairs, State of California.

2. On August 24, 1992, the Board issued Respiratory Care Practitioner's License Number 15392 to Respondent. The license was in full force and effect at all relevant times. It will expire on April 30, 2008, unless renewed.

3. On and around June 2, 2005, Kathy Hale (Hale) was an adult volunteer for a website dedicated to finding and reporting to law enforcement officials adults who use Internet chat rooms to seek sexual encounters with minors. The website's volunteers did not initiate communications with such adults, and they did not raise any sexual subjects with them.

///

///

¹ The written order is dated May 3, 2005.

² On May 19, 2006, Respondent's counsel, Edgardo Gonzalez, wrote to Deputy Attorney General Adrian Panton, stating that Respondent had "decided to voluntarily surrender his respiratory care license" and therefore did not object to the issuance of an interim suspension order. Mr. Gonzalez further indicated that neither he nor Respondent would appear at the May 22, 2006 hearing.

4. On June 2 and 6, 2005, Respondent communicated with Hale through an Internet chat room. Via a chat room profile which included a photograph of a young girl, Hale posed as a 12-year-old girl. Through a chat room conversation, Respondent made sexually explicit comments and overtures to Hale including an inquiry as to whether she had ever touched a penis, and if she enjoyed having her vagina rubbed.³ At Respondent's request, Hale sent Respondent a photograph of a female adult's breasts. Respondent wrote back that he was "not falling for that," and that he wanted a photograph showing her face and body. He stated that he had been online since 1996, and that he knew "all the tricks." Based on her chat room conversations of June 2 and 6, 2005 with Respondent, Hale notified Detective Richard Sheldon of the Riverside County Sheriff's Office.

5. On June 7, 2005, Hale responded to an instant message from Respondent. On that day, Hale was posing as a 13-year-old girl. Respondent asked if Hale had any "hot" pictures of herself, and Hale responded, "maybe." Respondent asked if her former boyfriend had ever kissed her vagina and photographed her, and he asked if she enjoyed sexually arousing "guys" in chat room conversations for the purpose of masturbation.

6. During the course of his chat room conversations with Hale, Respondent sent a photograph of his exposed penis to Hale via the Internet.

7. On October 13, 2005, Detective Sheldon executed a search warrant for Respondent's residence. Respondent's roommate, his former girlfriend, was present at the residence when Detective Sheldon arrived. She telephoned Respondent at work and told him that an emergency existed which required his presence at home. Respondent left work and went to his residence, at which time Detective Sheldon arrested him. Detective Sheldon asked Respondent if he knew why he was being arrested, and Respondent answered that it was about pornography.

8. During a post-arrest interview with Detective Sheldon, Respondent made the following admissions:

a. Respondent's Internet activity was his fantasy, and he masturbated while engaged in Internet conversations with girls.

b. Respondent had a drug problem, and he had ingested three or four lines of cocaine two days prior to his arrest.

c. Respondent's Internet conversations with underage females began two years before his arrest.

³ Respondent used street vernacular terms for various anatomical structures and sexual acts during his various chat room conversations.

d. Respondent had sent photographs of his exposed penis to at least 10 underage girls.

e. Respondent had many photographs of child pornography.

f. Respondent knew that sending pornographic photographs to girls under the age of 18 was illegal.

g. Respondent had met a 16-year-old girl on the Internet. He subsequently picked her up from school, drove to a secluded location, masturbated his exposed penis in her presence and touched her breasts while she masturbated him.

9. Following the interview, Respondent was transported to a detention center. A transporting officer noticed a folded piece of paper currency in Respondent's billfold. The currency contained a white powdery substance. Respondent admitted the substance was cocaine. Laboratory testing later determined the substance to be .25 grams of cocaine.

10. On March 14, 2006, Respondent was arraigned in the Superior Court of California, County of Riverside, on Felony Complaint No. RIF 128989, on the following charges:

Count 1—Attempt to send harmful matter (relating to sexual conduct) to a minor with the intent to seduce the minor (Pen. Code §§ 664/288.2, subd. (a))

Count 2—Possession of a controlled substance (Health & Saf. Code § 11350)

Count 3—Sale of child pornography (Pen. Code § 311.2, subd. (b))

Count 4—Possession of matter where minor engages in or simulates sexual conduct (Pen. Code § 311.11, subd. (a), a misdemeanor).

11. Respondent pled not guilty to the charges referenced in Paragraph 10, *ante*. Those criminal charges are presently pending.

12. At the hearing on the Ex Parte Petition for Interim Suspension Order, Respondent offered his declaration, several letters of recommendation, and the testimony of his supervisor at St. Mary's Medical Center in Long Beach.

13. Respondent's supervisor testified that, for the past year, Respondent has provided respiratory care for all segments of the hospital's population, from neonates to adults, including pediatric patients ages 1 through 18. If Respondent's license were restricted such that he was prohibited from treating pediatric patients, he would still be permitted to work in the hospital.

14. Included among the letters Respondent provided at the hearing is one from his psychotherapist, Lana Delshadi, Ed.D. In that letter, Dr. Delshadi indicated that Respondent has been seeing her in psychotherapy since October 2005. The letter does not contain any information concerning Respondent's diagnosis, prognosis, history, mental status, or any other information relevant to his sexual and/or drug activities. Dr. Delshadi stated only that Respondent "seems to be dedicated to improving himself and is gaining insight. I believe that part of the reason that he has been able to make progress in therapy is a result of having a sense of stability on his job, which is very important for him and his sense of self." At the hearing, Respondent, through his attorney, indicated that he was seeing Dr. Delshadi for stress relating to the criminal and administrative actions presently pending against him. He did not mention receiving treatment for the underlying causes/reasons for those actions.

15. At least equally troubling is the fact that, in his declaration offered at the hearing, Respondent did not deny any of the allegations in the Petition for Interim Suspension Order.

16. During the hearing, Respondent agreed to waive the 20-day time limit for the noticed hearing on the Petition for Interim Suspension Order set forth in Business and Professions Code section 11529, subdivision (c).

LEGAL CONCLUSIONS

1. Respondent has engaged in acts constituting violations of the Respiratory Care Practice Act in that he engaged in corrupt acts involving child pornography, as referenced in the Petition for Interim Suspension Order, within the meaning of Business and Professions Code section 3750, subdivision (j), by reason of Findings 2, 3, 4, 5, 6, 7, 8 and 15.

2. Respondent has engaged in acts constituting violations of the Respiratory Care Practice Act in that he was in possession of a controlled substance (specifically, cocaine), as referenced in the Petition for Interim Suspension Order, within the meaning of Business and Professions Code section 3750.5, subdivision (a), by reason of Findings 2, 8 and 9.

3. Permitting Respondent to continue to engage in the unrestricted practice of respiratory care will endanger the public health, safety, welfare and interest, by reasons of Findings 2, 3, 4, 5, 6, 7, 8, 9, 13, 14 and 15.

4. There is a reasonable probability that Petitioner will prevail on the Accusation to be filed, by reason of Findings 2, 3, 4, 5, 6, 7, 8, 9, 13, 14 and 15.

5. The likelihood of injury to the public in not issuing the below order outweighs the likelihood of injury to Respondent in issuing the order by reason of Findings 2, 3, 4, 5, 6, 7, 8, 9, 13, 14 and 15.

6. Respondent has demonstrated a serious and dangerous problem involving sexually-related activity with minor girls, punctuated by cocaine use. He offered no reassurance either that the allegations against him were untrue, or that he has taken steps to deal with and overcome his sexual and drug problems.

7. Placing restrictions on the types of patients Respondent may treat will not assist in this case. Even if he is prohibited from treating pediatric patients, he will still have access to their locations in the hospital. Respondent indicated to Hale that he has been engaged in sexually-related contact with minors, via the Internet, since 1996, and admitted to Detective Sheldon that he had engaged in at least one physical contact with an underage girl. On the day of his arrest, he left his work at the hospital and went home, where he was arrested. While still in custody that day, he was discovered in possession of cocaine, thus raising the implication, if not the inference, that he was in possession of cocaine while working at the hospital. No evidence was offered as to the type of stimulus that triggers Respondent's sexual and drug-related conduct. Therefore, the patient population cannot be adequately protected, even if Respondent's license is restricted.

ORDER

1. Pursuant to Business and Professions Code section 11529, pending further order from the Office of Administrative Hearings, Respiratory Care Practitioner License Number 15392 issued to Respondent, Steven Fernando Pena, shall be, and hereby is, immediately suspended, and Respondent, Steven Fernando Pena, is thereby immediately prohibited from practicing respiratory care in the State of California.

2. Respondent shall not:

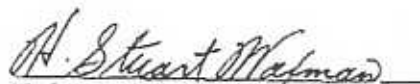
(a) Practice or attempt to practice any aspect of respiratory care therapy;

(b) Advertise himself, by any means, or hold himself out as practicing or being available to practice any system or mode of treating the sick or afflicted in this state, including but not limited to the practice of respiratory care to any person; or supervise assistants;

(c) Be present in any location or office which is maintained for the practice of respiratory care, or at which respiratory care is practiced, for any purpose except as a patient or as a visitor of family or friends.

3. If he has not already done so, Respondent, upon receipt of this order, shall immediately surrender to the Respiratory Care Board, or its agent, for safekeeping pending a final administrative order, all indicia of his licensure as a respiratory care practitioner, as contemplated by Business and Professions Code section 119, including but not limited to his wall certificate and wallet card issued by the Respiratory Care Board.

DATED: May 22, 2006



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings